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Supreme Court, U.S.
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No. 94-5707

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

SHARLENE WILSON,

Petitioner,

v.

STATE OF ARKANSAS,

Respondent.

On Writ of Certiorari to the Supreme Court of Arkansas

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JULY 28, 1994
CERTIORARI GRANTED NOVEMBER 28, 1994

81 pp

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TABLE OF CONTENTS

Docket Entries:	Page
CR 93-1-1	1
CR 93-63-1	3
CR 93-68-1	4
Pleadings:	
Information (CR 93-1-1) and affidavit filed December 31, 1992	5
Amended Information (CR 93-1-1) and affidavit for two counts of delivery of controlled substance filed May 28, 1993 (R.1)	9
Amended Information (CR 93-63-1) and affidavit for two counts of possession of a controlled substance with intent to deliver and one count of possession of drug paraphernalia filed May 28, 1993 (R.64)	10
Amended Information (CR 93-68-1) and affidavit for delivery of a controlled substance and terroristic threatening in the first degree filed May 28, 1993 (R.96)	13
Motion to Suppress Search and Seizure filed July 22, 1993 (R.21-22, 74, 109)	17
Verdict Form (CR 93-1-1)	
Guilty of delivery of marijuana on November 22, 1992 (R.47)	19
Jury sentence as habitual offender, 6 years (R.48)	19
Guilty of delivery of methamphetamine on November 23, 1992 (R.49)	20
Jury sentence as habitual offender, 25 years (R.50)	20
Verdict Form (CR 93-63-1)	
Not guilty of delivery of a methamphetamine related offense on December 31, 1992 (R.84)	21
Guilty of possession of marijuana on December 31, 1992 (R.85)	21
Jury sentence as habitual offender, 1 year and $1,000 fine (R.86)	21

TABLE OF CONTENTS—Continued

	Page
Guilty of possession of drug paraphernalia on December 31, 1992 (R.87)	22
Jury sentence as habitual offender, $10,000 fine (R.88)	22
Verdict Form (CR 93-68-1)	
Not guilty of delivery of a marijuana related offense on December 30, 1992 (R.119)	23
Judgment signed November 8, 1993 (R.53, 90, 121)	24
Notice of Appeal and Designation of Record filed November 16, 1993 (R.58, 92, 122)	27
Order declaring defendant indigent for purposes of appeal filed January 10, 1994 (R.60, 94, 123)	28
Suppression Hearing Transcript:	
CR 93-63-1 [NOTE: Material pertaining to the other three suppression issues will be omitted.]	
Colloquy of counsel and court (R.160-66)	29
Testimony of Henry Efird (R. 166-82)	32
Testimony of Roger Walls (R.182-87)	40
Colloquy of counsel and court (R.188-90)	43
Testimony of Sharlene Wilson (R.190-99)	44
Denial of Motion to Suppress (R.199)	45
Search Warrant of December 31, 1992 (DX 2) (R.167)	46
Trial Testimony:	
Testimony of Gary Martin (R.409-11)	54
Testimony of Sharlene Wilson (R.428-29) [Only the parts of the testimony where she admits the deliveries, working for the DEA, and her prior convictions are to be used]	55
Opinion of the Arkansas Supreme Court, July 11, 1994	71
Order of the Supreme Court of the United States granting certiorari and leave to proceed in forma pauperis, November 28, 1994	78

IN THE CIRCUIT COURT
OF HOT SPRING COUNTY, ARKANSAS

No. CR 93-1-1

STATE OF ARKANSAS

v.

SHARLENE WILSON and BRYSON JACOBS

DOCKET ENTRIES

(NOTE: Docket entries for co-defendant Bryson Jacobs are generally omitted.)

Delivery of a Controlled Substance, A.C.A. 5-64-401, Two Counts, Class Y & C Felonies

DATE	PROCEEDINGS
12-31-92	Information filed, bench warrant issued and given to Henry Efird, Arraignment for Jan. 11, 1993, 9 A.M.
1-11-93	R. Jeffrey—NG—Bond set as $100,000 on each offense—to be set on request
5-29-93	Amended Information w/affidavit
6-11-93	Notice of Substitution of Counsel
6-29-93	Order Substituting Counsel
7-13-93	Jury Trial for Bryson Jacobs—recessed to July 14
7-14-93	Trial resumed—both parties rests—jury verdict of guilty of all charges—sentenced per verdicts
7-22-93	Wilson's Motion to Suppress Search and Seizure

DATE	PROCEEDINGS
10-1-93	Speedy trial time waived until re-set according to docket availability—bond hearing with J.W. Hall representing—bond set at $100,000
11-1-93	Jury trial for Sharlene Wilson—J.W. Hall Defense Attorney—After motion hearing jury selected—opening statement—state's evidence—recessed to 11-4-93 at 9 A.M.
11-4-93	Trial resumed with evidence of state—state rests—evidence for defense—defense rests—instructions—argument—deliberation—
	Not Guilty of Marijuana on 12-20-92
	Not Guilty of Meth on 12-21-92
	Guilty of Delivery of Meth on 11-23-92 + 25 yrs
	Guilty of Delivery of Marijuana on 11-22-92 + 6 yrs
	Guilty of Poss of Marijuana on 12-31-92 + 1 yr in county jail + $1,000
	Guilty of Poss of Drug Para. + $10,000 fine
	Credit for jail time—immediate commitment
	Declared an indigent for appeal—sentence consecutive—appeal bond $100,000
	Committment
11-16-93	Notice of Appeal + Designation of Record
1-10-94	Order filed (granting Def. indigent status for appeal)

No. CR-93-63-1

Possession of a Controlled Substance with Intent to Deliver. A.C.A. 5-64-401, 2 Counts, Class Y, [Jacobs: Felon in Possession of Firearm, A.C.A. 5-73-103, Class D Felony]

DATE	PROCEEDINGS
4-7-93	Information filed, bench warrant issued, notice of arraignment for 4-12-93
4-12-93	Bench warrant returned, Wilson
4-12-93	Both plead NG
5-28-93	Amended information w/affidavit
11-3-93	Jury trial—see entry in CR93-1-1—(Wilson) Commitment
11-16-93	Notice of appeal and designation of record
1-10-94	Order filed (granting indigent stauts for Def. for appeal)

No. CR-93-68-1

1) Delivery of Controlled Substances

2) Terroristic Threatening First Degree

DATE	PROCEEDINGS
2-16-93	Information w/affidavit filed; Bench Warrant Issued and Given to Henry Efird; Notice of Arraignment issued setting arraign. on Mar. 8, 1994 @ 9 A.M.
4-13-93	Bench warrant returned
7-22-93	Motion to suppress search + seizure
10-1-93	Bond hearing—set at $100,000—speedy trial time waived from continuance—Sept. to new trial date—Mr. Hall to provide available dates and court will set
9-29-93	Set for Oct. 28, 1993 9 A.M.—Jury
10-8-93	Reset for Nov. 3, 1993 9 A.M. Jury
11-3-93	Jury trial—see docket entry in CR 93-1-1
11-8-93	Judgment
11-16-93	Notice of Appeal and Designation of Record
1-10-94	Order filed (granting indigent stauts for Def. for appeal)

CHRONOLOGY OF PROCEEDINGS IN ARKANSAS SUPREME COURT

CR 94-160

Transcript filed, February 14, 1994

Appellant Wilson's Brief filed,

Appellee's Brief filed,

Opinion of Arkansas Supreme Court, July 11, 1994

[Filed Dec. 31, 1992]

IN THE CIRCUIT COURT OF HOT SPRING COUNTY, ARKANSAS

No. CR-93-11-1

STATE OF ARKANSAS

vs.

SHARLENE WILSON, BRYSON JACOBS

INFORMATION WITH AFFIDAVIT

Delivery of a Controlled Substance, Two Counts
One Class Y Felony and One Class C Felony
A.C.A. 5-64-401

I, DAN HARMON, PROSECUTING ATTORNEY WITHIN AND FOR THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF ARKANSAS, of which Hot Spring County is a part, in the name and by the authority of the State of Arkansas, do hereby charge SHARLENE WILSON AND BRYSON JACOBS with the crimes of DELIVERY OF A CONROLLED SUBSTANCE, METHAMPHETAMINE, a Schedule I controlled substance, A.C.A. 5-64-401, CLASS Y FELONY and DELIVERY OF A CONTROLLED SUBSTANCE, MARIJUANA, a Schedule VI controlled substance, A.C.A. 5-6-401, CLASS C FELONY, committed as follows to wit:

COUNT ONE

The said defendants on or about November 22, 1992 in Hot Spring County, Arkansas unlawfully and feloniously delivered a controlled substance, that being a quantity of

marijuana, a Schedule VI controlled substance, to a confidential informant working for the Seventh Judicial District Drug Task Force in exchange for $70.00, see attached affidavit, against the peace and dignity of the State of Arkansas.

COUNT TWO

The said defendants on or about November 23, 1992 in Saline County, Arkansas unlawfully and feloniously delivered a controlled substance, that being a quantity of methamphetamine, a Schedule I controlled substance, to a confidential informant working for the Seventh Judicial District Drug Task Force in exchange for $100.00, see attached affidavit, against the peace and dignity of the State of Arkansas.

The defendant, Bryson Jacobs has previously been convicted of more than one but less than four felonies and his sentence should be enhanced in accordance with A.C.A. 5-4-501.

DAN HARMON
Prosecuting Attorney

By: /s/ Dan Harmon
Deputy Prosecuting Attorney

I, Judy W. Rudd, state on oath that the above and foregoing statements are true and correct to the best of my knowledge, information and belief.

/s/ Dan Harmon

I, hereby find that this sworn affidavit (attached) demonstrates reasonable and probable cause for the issuance of a warrant of arrest for the above-named individual(s) for the above-stated offense(s).

/s/ John W. Cole
Magistrate

AFFIDAVIT

Facts and Evidence Alleging Probable Cause

Comes now John Garner of the Seventh Judicial District Drug Task Force and on oath swears and affirms that to the best of his knowledge and belief the following facts and evidence exist to believe that Sharlene Wilson W/F and Bryson Jacobs W/M violated the criminal laws of the State of Arkansas.

My name is John Garner and I am a Supervisor with the Seventh Judicial District Drug Task Force. On 11-22-92, at approximately 20:55 hours, an Agent for the Seventh Judicial District Drug Task Force met with a confidential informant in Malvern, AR behind the Malvern Airport. The Agent briefed, searched and equipped the informant with a body mike transmitter. The Agent gave the informant $120.00 with which to purchase narcotics. Prior to the meeting between the Agent and the informant, Bryson Jacobs contacted the informant to arrange a meeting for the sale of marijuana. The Agent followed the informant to 534 Oaklawn Street in Malvern, AR, the residence of Sharlene Wilson and Bryson Jacobs. The Agent observed the informant enter the residence at approximately 21:10 hours and monitored and recorded the conversation between the informant, Sharlene Wilson and Bryson Jacobs. The Agent heard the informant purchase a half ounce of marijuana for $70.00 and Bryson Jacobs make change for the informant. The Agent followed the informant to a prearranged location where the informant gave the Agent the evidence and the remainder of the money ($50.00). The Agent retained the evidence in his possession and turned it over to me for lab submission.

On 11-23-92, at approximately 20:10 hours, an Agent for the Seventh Judicial District Drug Task Force met with a confidential informant in Malvern, AR. The Agent briefed, searched and equipped the informant with a body

mike transmitter. The Agent gave the informant $100.00 with which to purchase narcotics. Prior to the meeting between the Agent and the informant, Bryson Jacobs contacted the informant to arrange a meeting for the sale of methamphetamine. The Agent followed the informant to 534 Oaklawn Street in Malvern, AR, the residence to Sharlene Wilson and Bryson Jacobs. The Agent observed the informant enter the residence at approximately 20:20 hours and monitored and recorded the conversation between the informant, Sharlene Wilson and Bryson Jacobs. Bryson Jacobs informed the informant of the quality of the methamphetamine. The Informant purchased four triangular, heat-sealed plastic packets of suspected methamphetamine for $100.00. The informant gave the Agent the evidence. The Agent retained the evidence in his possession and turned it over to me for lab submission.

Defendant Bryson Jacobs has previously been convicted for Arson and Firebombing in New Mexico.

/s/ John Garner
JOHN GARNER
Drug Task Force

* * * *

[Subscription paragraph omitted.]

[Note: This document was omitted from transcript.]

[Filed May 28, 1993]

IN THE CIRCUIT COURT
OF HOT SPRING COUNTY, ARKANSAS

(Title Omitted in Printing)

AMENDED INFORMATION WITH AFFIDAVIT

Information for Delivery of a Controlled Substance A.C.A. 5-64-401
Two Counts Class Y Felony Class C Felony

---

* * * *

[Amendment:]

The State of Arkansas also charges SHARLENE WILSON as an HABITUAL OFFENDER, A.C.A. 5-4-501, having been previously been convicted or found guilty of more than one (1) but less than four (4) felonies.

* * * *

[Affidavit the same]

[Filed May 28, 1993]

IN THE CIRCUIT COURT
OF HOT SPRING COUNTY, ARKANSAS

(Title Omitted in Printing)

AMENDED INFORMATION WITH AFFIDAVIT

Information for Possession of a Controlled Substance with Intent to Deliver A.C.A. 5-64-401 Two Counts Class Y Felony Class C Felony Possession of Drug Paraphernalia A.C.A. 5-64-403 Class C Felony Felon in Possession of a Firearm A.C.A. 5-73-103 Class D Felony

I, DAN HARMON, PROSECUTING ATTORNEY WITHIN AND FOR THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF ARKANSAS, of which HOT SPRING COUNTY is a part, in the name and by the authority of the State of Arkansas, do hereby amend the information and charge SHARLENE WILSON and BRYSON JACOBS with POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER, A.C.A. 5-64-401 (METHAMPHETAMINE AND HYDROMORPHONE), CLASS Y FELONY; POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER, A.C.A. 5-64-401 (MARIJUANA), CLASS C FELONY; POSSESSION OF PARAPHERNALIA, A.C.A. 5-64-403, CLSS C FELONY and charge BRYSON JACOBS with FELON IN POSSESSION OF A FIREARM, A.C.A. 5-73-103, CLASS D FELONY and also charge SHARLENE WILSON as an HABITUAL OFFENDER, A.C.A. 5-4-501, committed as follows, together wit:

COUNT ONE: The said defendants on or about 12-31-93 in Hot Spring County, Arkansas unlawfully and feloniously possessed controlled substances, that being methamphetamine and hydromorphone, Schedule II controlled substances, with the intent to deliver, against the peace and dignity of the State of Arkansas, see attached affidavit.

COUNT TWO: The said defendants on or about 12-31-93 in Hot Spring County, Arkansas unlawfully and feloniously possessed a controlled substance, that being a quantity of marijuana, a Schedule VI controlled substance, with the intent to deliver, against the peace and dignity of the State of Arkansas, see attached affidavit.

COUNT THREE: The said defendants on or about 12-31-93 in Hot Spring County, Arkansas unlawfully and feloniously possessed drug paraphernalia, that being syringes, forceps, and other items, against the peace and dignity of the State of Arkansas, see attached affidavit.

COUNT FOUR: The said defendant, Bryson Jacobs, on or about 12-31-93 in Hot Spring County, Arkansas unlawfully and feloniously possessed firearms after previously having been convicted of a felony, against the peace and dignity of the State of Arkansas, see attached affidavit.

The State of Arkansas also charges SHARLENE WILSON as an HABITUAL OFFENDER, A.C.A. 5-4-501, having been previously been convicted or found guilty of more than one (1) but less than four (4) felonies.

* * * *

[Jurat, oath, certificate of service omitted]

AFFIDAVIT

The affiant, John Garner, being first duly sworn, states as follows:

My name is John Garner and I am a Supervisor with the Seventh Judicial District Drug Task Force. On 12-31-92, Agents for the Drug Task Force executed a Search/Seizure Warrant at 534 Oaklawn Street, Malvern, Hot Spring County, Ar., the residence of Sherlene Wilson, W/F, and Bryson Jacobs, W/M. Both subjects were present at the residence at the time the warrant was served. During the search, numerous items were seized, including, suspected methamphetamine, suspected marijuana, yellow tablets of an unknown nature, but suspected as a controlled substance, several firearms, and items of drug paraphernalia, i.e. drug records, syringes, forceps, etc. Both Wilson and Jacobs were arrested on warrants. The seized evidence was either stored or transported to the State Crime Lab for analysis.

The above statements are true and correct to the best of my knowledge, information and belief.

[Jurat and oath omitted]

[Filed May 28, 1993]

AMENDED INFORMATION WITH AFFIDAVIT

IN THE CIRCUIT COURT
OF HOT SPRING COUNTY, ARKANSAS

No. CR 93-68-1

THE STATE OF ARKANSAS

vs.

SHARLENE WILSON

Information for Delivery of Controlled Substance A.C.A. 5-64-401 Class C Felony Terroristic Threatening First Degree A.C.A. 5-13-301 Habitual Offender A.C.A. 5-4-501

I, DAN HARMON, PROSECUTING ATTORNEY WITHIN AND FOR THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF ARKANSAS, of which HOT SPRING COUNTY is a part, in the name and by the authority of the State of Arkansas, do hereby amend the information and charge SHARLENE WILSON with DELIVERY OF A CONTROLLED SUBSTANCE, A.C.A. 5-64-401 (MARIJUANA), CLASS C FELONY; TERRORISTIC THREATENING FIRST DEGREE, A.C.A. 5-13-301, CLASS D FELONY, and as an HABITUAL OFFENDER, A.C.A. 5-4-501, committed as follows, together wit:

COUNT ONE: The said defendant on or about 12-30-93 in Hot Spring County, Arkansas unlawfully and feloniously delivered a controlled substance, that being marijuana, to a confidential informant of the Seventh Judicial District Drug Task Force in exchange for $35.00, against the peace and dignity of the State of Arkansas, see attached affidavit.

COUNT TWO: The said defendant on or about 12-30-93 in Hot Spring County, Arkansas unlawfully and feloniously with the intent of terrorizing another person, threatened to cause serious physical injury or death to a confidential informant of the Seventh Judicial District Drug Task Force, against the peace and dignity of the State of Arkansas, see attached affidavit.

The State of Arkansas also charges SHARLENE WILSON as an HABITUAL OFFENDER, A.C.A. 5-4-501, having been previously been convicted or found guilty of more than one (1) but less than four (4) felonies.

* * * *

[Jurat, oath, certificate of service omitted]

AFFIDAVIT

The affiant, John Garner, being first duly sworn, states as follows:

My name is John Garner and I am a Supervisor with the Seventh Judicial District Drug Task Force. On 12-30-92, at approx 1930 hrs., Agents for the Drug Task Force met with a Confidential Informant at the Hot Spring County Courthouse. The C/I made a telephone call to 332-8733, the residence of Sherline Wilson, W/F, DOB, 12-27-56, at 534 Oaklawn Street, Malvern, Ar., to inquire about buying some narcotics. A white male, identified as Bryson Jacobs, DOB, 9-12-44, also a resident of the address, answered the telephone. The C/I asked him if he had any narcotics to sell and he said he did, but Sherline would be back in ten (10) minutes, and to call back.

At approx 1955 hrs., the C/I called back and Sherline Wilson answered the phone. The C/I asked if she had any narcotics to sell and she (Wilson) told the C/I that she had marijuana. The C/I ordered a quarter ounce and Wilson told C/I to meet her at the Country Mart Store, on East Page Street, in five (5) minutes.

The C/I was searched and given $40.00, and surveillance was established as the C/I drove to the meeting place. Agents observed Sherline Wilson driving a 1992 Nissen pick up truck, gray in color, baring Ar LPN TZP 615, which lists to her, meet with the C/I, at approx 2005 hrs. The C/I got into Wilson's vehicle and, at this point, Wilson asked the C/I if she was working for the cops. The C/I said that she was not and Wilson threatened the C/I with serious physical injury if she (Wilson) found out that she was. Wilson made the C/I lift her shirt to check for surveillance equipment. The C/I then handed Wilson $40.00 for a quarter ounce of marijuana and Wilson said that the price was $35.00 and they would have to go get change. Wilson insisted that the C/I ride with her to a nearby store to get change and en route

showed the C/I a small, chrome plated, semi automatic pistol and again threatened the C/I with serious physical injury or death, if she (C/I) was working for the police. Once the change was obtained, Wilson handed the C/I a plastic bag containing green, vegetable material and $5.00. Wilson returned the C/I to her vehicle and left the area.

The C/I met Agents immediately after leaving Wilson's presence, and handed them a plastic bag containing green, vegetable material represented to be marijuana, and $5.00 change. The Agent retained the evidence and turned it over to affiant for lab submission.

The above statements are true and correct to the best of my knowledge, information and belief.

* * * *

[Jurat and oath omitted]

[Filed July 22, 1993]

IN THE CIRCUIT COURT
OF HOT SPRING COUNTY, ARKANSAS

Nos. CR93-1, CR93-63, CR93-68

STATE OF ARKANSAS

vs.

SHARLENE WILSON

MOTION TO SUPPRESS SEARCH AND SEIZURE

Defendant moves to suppress the search and seizure of her premises conducted on December 31, 1992 as in violation of the Fourth Amendment to the U.S. Constitution, Art. 2 § 15 of the Arkansas Constitution, and the Arkansas Rules of Criminal Procedure under the following grounds:

1. The affidavit in application for the warrant contains stale information since it relates to an alleged buy occurring one month earlier.

2. The affidavit fails to demonstrate a sufficient nexus between the alleged buy and the fact to be inferred; i.e., that contraband will be on the premises to be searched.

3. The affidavit is based on hearsay, and it fails to disclose the extent of the hearsay or why it is trustworthy. A.R.Crim.P. 13.1(b).

4. There was no valid search warrant in existence at the time of the search of the premises.

5. A copy of the warrant was not served on defendant prior to the search. A.R.Crim.P. 13.3(b).

6. The affidavit for the search warrant was not sworn to before the issuing judicial officer. A.R.Crim.P. 13.1(b).

7. A proper receipt or inventory was not prepared and provided to defendant. A.R.Crim.P. 13.3(d).

8. The executed warrant was not returned to the incurring judicial officer "together with a verified report of the facts and circumstances of execution, including a list of things seized." A.R.Crim.P. 13.4(b).

WHEREFORE, the motion to suppress should be granted.

* * * *

[Jurat and certificate of service omitted]

VERDICT FORM
(CR 93.1-1)

We, the Jury, find SHARLENE WILSON guilty of Delivery of Marijuana on November 22, 1992.

[Signature omitted]

VERDICT FORM—HABITUAL OFFENDER—
STATUS UNDISPUTED

We, the Jury, fix the sentence of SHARLENE WILSON for the offense of Delivery of Marijuana on November 22, 1992 at:

(A) A term of 6 years (not less than six (6) years nor more than twenty (20) years) in the Arkansas Department of Correction; OR

(B) A fine of (not to exceed $10,000.00) dollars; OR

(C) Both a term of (not less than six (6) years nor more than twenty (20) years) in the Arkansas Department of Correction and a fine of (not to exceed $10,000.00) dollars.

[Signature omitted]

VERDICT FORM
(CR 93-1-1)

We, the Jury, find SHARLENE WILSON guilty of Delivery of Methamphetamine on November 23, 1992.

[Signature omitted]

VERDICT FORM—HABITUAL OFFENDER—
STATUS UNDISPUTED

We, the Jury, fix the sentence of SHARLENE WILSON for the offense of Delivery of Methamphetamine on November 23, 1992 at:

A term of 25 years (not less than twenty (20) years nor more than sixty (60) years or life) in the Arkansas Department of Correction.

[Signature omitted]

VERDICT FORM
(CR 93-63-1)

We, the Jury, find SHARLENE WILSON not guilty of a methamphetamine related offense on December 31, 1992.

[Signature omitted]

VERDICT FORM
(CR 93-63-1)

We, the Jury, find SHARLENE WILSON guilty of Possession of Marijuana on December 31, 1992.

[Signature omitted]

VERDICT FORM—HABITUAL OFFENDER—
STATUS UNDISPUTED

We, the Jury, fix the sentence of SHARLENE WILSON for the offense of Possession of Marijuana on December 31, 1992, at:

(A) A term of (not more than one (1) year) in the County Jail; OR

(B) A fine of (not to exceed $1,000.00) dollars; OR

(C) Both a term of 1 year (not more than one (1) year) in the County Jail and a fine of $1,000.00 (not to exceed $1,000.00) dollars.

[Signature omitted]

VERDICT FORM
(CR 93-63-1)

We, the Jury, find SHARLENE WILSON guily of Possession of drug Paraphernalia.

[Signature omitted]

VERDICT FORM—HABITUAL OFFENDER—
STATUS UNDISPUTED

We, the Jury, fix the sentence of SHARLENE WILSON for the offense of Possession of Drug Pharaphernalia at:

(A) A term of (not less than six (6) years nor more than twenty (20) years) in the Arkansas Department of Correction; OR

(B) A fine of $10,000.00 (not to exceed $10,000.00) dollars; OR

(C) Both a term of (not less than six (6) years nor more than twenty (20) years) in the Arkansas Department of Correction and a fine of (not to exceed $10,000.00) dollars.

[Signature omitted]

VERDICT FORM
(CR 93-68-1)

We, the Jury, find SHARLENE WILSON not guilty of a marijuana related offense on December 30, 1992.

[Signature omitted]

[Filed Nov. 8, 1993]

IN THE CIRCUIT COURT
OF HOT SPRING COUNTY, ARKANSAS

Case No. CR 93-1-1
93-63-1
93-68-1

STATE OF ARKANSAS

vs.

SHARLENE WILSON, a/k/a Sharlene Dunn
a/k/a Sharlene Cate, a/k/a Sharlene Lawrence,
a/k/a Sheri Cate,
Defendant

JUDGMENT

On November 4, 1993, comes the State of Arkansas by DAN HARMON, Prosecuting Attorney for the Seventh Judicial District, and comes the Defendant in person and by her attorney, John Wesley Hall; and the Defendant having been called to the bar of the Court and entered her plea of not guilty thereto, parties announce ready for trial, thereupon come twelve (12) qualified electors of Hot Spring County, Arkansas, who are empaneled and sworn as a Trial Jury in this case, and after hearing the testimony of the witnesses, the instructions of the Court and the argument of Counsel, the Jury doth retire to consider arriving at a verdict and after due deliberation thereon, doth return into open Court with the following verdict:

In Case No. CR93-1-1, "We, the Jury, find the defendant, SHARLENE WILSON, guilty of Delivery of Marijuana, and fix her punishment at a sentence of Six (6) years in the Arkansas Department of Corrections, and We, the Jury, find the defendant, SHALENE WILSON, guilty of Delivery of Methamphetamine, and fix her punishment at a sentence of Twenty-five (25) years in the Arkansas Department of Corrections."

In Case No. CR 93-63-1, "We, the Jury, find the defendant, SHARLENE WILSON, guilty of Possession of Drug Paraphernalia, and fix her punishment at a fine of $10,000.00."

"We, the Jury, find the defendant, SHARLENE WILSON, guilty of Possession of Marijuana, and fix her punishment at a sentence of One (1) year in the Hot Spring County Jail and a fine of $1,000.00."

"We, the Jury, find the defendant, SHARLENE WILSON, not guilty of Possession of Methamphetamine with the Intent to Deliver."

In Case No. CR 93-68-1, "We, the Jury, find the defendant, SHARLENE WILSON, not guilty of Delivery of Marijuana."

Whereupon the Court doth discharge the Jury from this case, and the Court doth ask the Defendant if there is any legal reason why Judgment should not be entered at this time, and the Defendant replying in the negative, the Court doth this day sentence the Defendant to:

1.) One (1) year in the Hot Spring County Jail and a fine of $1,000.00 for Possession of Marijuana in Case No. CR 93-63-1, the defendant is to be given credit for the time already served in the Hot Spring County Jail.

2.) Twenty-five (25) years in the Arkansas Department of Corrections for Delivery of Methamphetamine in Case No. CR 93-1-1.

3.) Six (6) years in the Arkansas Department of Corrections for Delivery of Marijuana in Case No. CR 93-1-1.

4.) A $10,000.00 fine for Possession of Drug Paraphernalia in Case No. CR 93-63-1.

Defendant is advised of her right to appeal to the Arkansas Supreme Court and, further, that she has thirty (30) days in which to file a Notice of Appeal. She is also advised that if she is not satisfied with the services of her attorney at trial that she has 30 days to notify the Court in the proper manner or to institute proper filing for ineffective assistance of council within that 30 day time.

This Judgment having been made on November 4, 1993, is entered now for then.

[Signature omitted]

[Filed Nov 16, 1993]

IN THE CIRCUIT COURT
OF HOT SPRING COUNTY, ARKANSAS

(Title Omitted in Printing)

NOTICE OF APPEAL AND DESIGNATION OF RECORD

The defendant appeals the judgment of conviction in these cases to the Arkansas Supreme Court. Jurisdiction is based on S.Ct. Rule 1-2(a)(2).

The record on appeal shall consist of all pleadings and papers in the clerk's file (except subpoenas and jury related documents), the testimony of any hearings in the case for bond revocation, bond setting, motions to dismiss or suppress, and the trial. The record of testimony is hereby ordered from the Court Reporter (defendant has been previously declared an indigent for appeal).

* * * *

[Signature and certificate of service omitted]

[Filed Jan. 10, 1994]

IN THE CIRCUIT COURT
OF HOT SPRING COUNTY, ARKANSAS

(Title Omitted in Printing)

ORDER

On motion of the defendant, the defendant is hereby declared indigent for the purposes of appeal.

IT IS SO ORDERED.

[Signature omitted]

SUPPRESSION HEARING TRANSCRIPT
(R. 160-199)

THE COURT: I had no knowledge of it, of course. Okay, what else do we have, John?

MR. HALL: Motion to suppress the search, which this deals with 93-63.

I prepared a motion to suppress which I mailed to the Clerk. My client got a copy of it, but apparently it's not in the court file. So, apparently never arrived here and I don't know whether Mr. Harmon got it. Anyway the grounds that I alleged in that, this is only in 93-63, it doesn't pertain to 93-1 or 93-68. For grounds first, because there is a question here of whether or not the warrant was signed before the search (R. 161) occurred. I read the transcript of Jacobs' trial whenever it was and it never was made clear to me whether or not it was, that they may have had the warrant in transit to you to be signed and then executed the search at another time.

THE COURT: In other words, the search was executed before the search warrant was executed.

MR. HALL: Possibly. I'm raising that as a ground that we have to try it because it never was made clear to me at the Jacobs trial and also the testimony of Mr. Efird, I believe, at Bryson Jacobs' February hearing, it left that open as well because he said he did not go to Sheridan to sign it and that's the second grounds. Efird testified in February of '93 at the Jacobs' trial and I'd like to make a copy of that part of the record. I'll get separate copies of that and make it part of the file. I guess we can make it Defendant's Exhibit No. 1 for that hearing.

THE COURT: Any problem with that, Mr. Harmon?

MR. HARMON: No.

THE COURT: I'll allow you to excerpt that and make it an exhibit to this hearing as Defendant's Exhibit No. 1.

(THEREUPON, the item was marked for identification as Defendant's Hearing Exhibit No. 1. [omitted])

MR. HALL: And he testified, I believe, it's been corrected by the record, but he testified, I believe, that he signed the affidavit before a Notary Public and it was taken to the Court to be executed, to be signed off on by the Court and the affidavit for the warrant itself says it was subscribed to before the Court.

MR. HARMON: It was subscribed to before the Court.

THE COURT: So, the question is whether the Court took the affidavit or someone else took the affidavit and it was brought to the Court.

MR. HALL: And there's very confusing times to when the warrant was actually obtained because a charge was filed, a case that became 93-1 when the affidavit was filed with the Court Clerk by Mr. Birch at 4:18 p.m. that day. The search occurred at five o'clock. The exact sequence of events are very unclear and the Bryson Jacobs trial didn't clear it up. His suppression hearing didn't even clear it up. I don't want to make that a part of the record, I don't want to clutter up the record.

Third, three exculpatory things were omitted in the affidavit. I think they're exculpatory. They go to the credibility of the informant. This whole affidavit depends on the informant's credibility. The affidavit as a whole leaves the impression that this informant is a citizen informant. It doesn't tell the Court which was developed by her own testimony at the Jacobs' trial, that she had been arrested and they in effect were rolling her over, she and her husband had been arrested. Their truck had been seized and she became a cooperating person. That was omitted completely from the affidavit. That would go to her credibility, her reason to give up somebody else.

Secondly, it doesn't mention in here that she had been to see the defendant several times to make entreaty to the defendant to get her to deliver something to her. There was testimony at the Jacobs' trial, it was admitted that she made numerous trips over to Sharlene Wilson's house. They varied as to how many. The witness has testified

to it. You may recall. Anyway, she went there several times. The defense of entrapment is one of the delivery, possibly both, depending on what the jury, how it comes out—

And third, it didn't mention that Sharlene Wilson had to leave to get the drugs from somebody else. The drugs weren't on the premises. This is the delivery count that occurred, the methamphetamine delivery that occurred prior to form the basis of the charge of 93-1, I believe.

Count Two in 93-1 talks about delivery of marijuana and methamphetamine on the 22nd and 23rd of November, 1992. That was the basis of the search warrant. This is stuff that happened a month earlier.

MR. HARMON: The basis of the search warrant was the buy that was made the day before.

MR. HALL: That's correct. On December 30th, she met with, Efird met the informant, Efird is the affiant, sent her in, she was not wired because they couldn't put a wire on her so the whole thing turns on the informant's credibility to Efiird and all these things were not pointed out. That's kind of a Frank's challenge, Franks vs. Delaware. And the fourth challenge is they did not knock or announce when they came in. That's required by the Fourth Amendment because a person has the right to give up possession of their home to the police or the entry of their home to the police by the police saying who they are, why they're there so violence doesn't erupt. That's Miller versus United States. It's not real clear in the Arkansas Rules of Criminal Procedure whether it's required or not. That's what I was looking up during the recess. But Miller makes it a Fourth Amendment mandate regardless of what the rules say.

MR. HARMON: They did knock and announce police.

MR. HALL: She didn't hear them.

THE COURT: Well, do you want to offer any evidence besides the exhibit that you've introduced.

MR. HALL: I'll have the affidavit and the warrant, which have to be exhibits. I'll just make them one combined exhibit, Defendant's 2. Call Henry Efird.

(THEREUPON, the item was marked for identification as Defendant's Hearing Exhibit No. 2. (follows at J.A. —)

THE COURT: You're still under oath.

OFFICER HENRY EFIRD
(R. 166-82)

called as a witness on behalf of the Defense, after having previously been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HALL:

Q You were the affiant on a search warrant for December 31, 1992?

A Yes.

Q Could you give the Court the chronology of when what was done to obtain the search warrant and then the search itself?

A I obtained the information and I went to the Prosecuting Attorney's Office in Benton and I met with the Deputy Prosecuting Attorney, Mr. Mike Robinson. We did an affidavit for the search warrant and at that time I left and went to Sheridan and presented the search warrant to the Judge.

MR. HALL: Your Honor, to assert that matter, we're going to number these pages so the record will be clear of what we're talking about.

Q Mr. Efird, state this for the record before I hand it to you, I've got Defendant's Exhibit No. 2, which is a search warrant which is apparently three pages long, signature of the Judge on page three along with a return and stating inventory was made and if these pages don't coincide with yours, that's okay, we're just stating it for the record. Page four of this is the affidavit, which at

the bottom says, "Date of Affidavit." It's typed, handwritten is 12/31/92 and then there's handwritten information. Is that your handwriting at the bottom?

A No, sir.

Q Whose is it?

A Judge Cole.

Q And to page five, which is the second page of the affidavit is your signature?

A Yes, sir.

Q And, is that sworn to in Judge Cole's presence and then page six is the application for search warrant signed by Mr. Harmon?

A Yes, sir.

Q Page seven apparently is the inventory?

A Yes, sir.

Q Which is signed, "John Garner, DTF"?

A Yes, sir.

Q Let you look at that and verify it. Is that all the information there is on the search warrant?

A That's all I know of. Yes, sir.

MR. HALL: Defendant's 2 already been admitted?

THE COURT: Yes, sir.

* * * *

Q How long had you been working with Ms. Potts, the informant?

A Approximately a month.

Q Prior to 11-22 and 11-23-92, how long had she been working for you at that time?

A She had just went to work because she was assigned to me.

Q Why was she assigned to you?

A Because she came from Hot Spring County.

Q How did she come to be assigned to you?

A An agent had contacted her and talked to her, her and her husband and they had wanted to work for the Drug Task Force.

Q Did you know why they wanted to work for the Drug Task Force?

A No, sir, I had just been recently employed up there.

Q Do you recall your testimony from the Bryson Jacobs' trial on that? Page 310 of the transcript, the transcript from the Supreme Court and this is your testimony, I'v got each witness and your's starts at 276. This is on cross, "Why did Joann Potts decide the become a good citizen and be a confidential informant?" Answer, "She said she was tired of drugs and she had a baby that she had to raise and she said we wanted to help get some off the streets." Do you recall that testimony?

A Yes, sir.

Q That was your understanding at the time?

A Yes, sir.

Q Anybody tell you about her being arrested?

A I had knowledge that she had been arrested, but she was not charged.

Q Did you arrest her for drugs?

A Her and her husband both had been arrested for drugs.

Q And their truck was seized?

A Yes, sir.

Q And they agreed to work to get their truck back?

A No, sir. I have no knowledge of them getting their truck back.

Q She agreed to work and she ultimately was not charged?

A I don't know anything about that conversation. The only thing I know is that her and her husband had been arrested.

Q Do you know who arrested them?

A I do not know. And she had contacted Steve Gullett and said that she wanted to work. And they asked me if I could use her. So, I made contact with them. I didn't go into details, what their charges were or anything.

Q But you knew at the time—

A I knew that she had been involved in some drug charges.

Q And she had been arrested for it but not charged in Municipal.Court or Circuit Court, correct?

A I knew that they had been charged, but I didn't know whether the cases had been to Court or not at that time.

Q I'm assuming some things in my questions, thinking that's how it all went down. I wasn't trying to ask you leading questions. If I put words in your mouth at all, will you correct me? At the time you did the affidavit for the search warrant, you know that she had been arrested, she wasn't what we call citizen informant?

A I knew that there were charges pending on them or I knew that they had been charged, let me put it that way.

Q She had also been paid for her work, had she not?

A Yes.

Q How much?

A I don't have the records in front of me, but I think it was $25.00 a buy.

Q I won't ask you the names of any other people. But, she made buys from other people?

A Yes.

Q How many other people and how many buys?

A As I recall correctly, there was two or three other cases pending.

Q She got $25.00 a buy?

A Yes.

Q And she was paid in cash?

A Paid in cash, signed a receipt.

Q She got paid the day she brought you the drugs back?

A The day she bought the drugs.

Q And you knew all that when you filled out the affidavit?

A Correct.

Q How many times had Mrs. Potts been to see Sharlene Wilson prior to the buys actually occurring?

A I could not tell you.

Q More than once?

A I would assume that there was more than one time.

Q Did you tag along, surveillance, that type thing?

A I had been watching Sharlene and Bryson Jacobs' residence for several months because we had had a lot of complaints on the traffic and I'd been running license numbers and everything. I pretty well knew what was going on over there.

Q But in the period prior to the 23rd or 22nd of November, how many times had she been in that house or in contact with Sharlene, let me put it that way, either in the house or outside?

A I couldn't actually tell you how many times she had been in contact with her. I don't know. The only time I can tell you that she was definitely in contact with them was whenever I was there.

Q And, that was how many times, approximately?

A Three or four times.

Q Did you make any reports of those contacts that no buy occurred?

A No, sir.

Q How many times did no buy occur?

A A couple or three times. Either Sharlene wasn't there or she was gone and she would be right back or something like that and then I had watched Sharlene go to her residence at Harp.

Q The occasions when you sent Mrs. Potts in, you believed that Sharlene Wilson was home on those days, didn't you?

A I listened to it on the transmitter, the—

Q Well, you surveiled the house to determine whether or not Sharlene Wilson was home?

A I would take and find out if her truck was there and usually if her truck was there, she was there.

Q Some occasions Sharlene Wilson was there, but no buy occurred, correct?

A That's correct. But she stated that she was out.

Q But you don't have any reports of those incidents when no buy occurred?

A No, sir.

Q Is it not incriminating that an alleged drug dealer says, "I wish I could help you, but I'm out"?

A Yes, sir.

Q And, that goes to their intent to deliver. But, you didn't make any reports of that?

A No, sir. I wanted it on actual tape.

Q We have tapes of those prior occasions where—

A I have tapes of two of the buys and one of the tapes was bad.

Q Prior to the buy, when Potts went in to try and make a buy and one wasn't made, do you have a tape of those?

A I had a tape of those and we went and rewound the tapes and when the actual buy went down, we used the same tapes.

Q And you rewound the tape at the beginning—

A Back at the beginning.

Q So, the tapes of where no buy occurred were recorded over?

A That's correct.

Q And they're unavailable?

A That's correct.

Q And there's no written reports of those?

A That's correct.

Q On one of the methamphetamine buys, did Sharlene Wilson say that she had to get the drugs from somebody else or did she leave to go get them and come back?

A On the methamphetamine?

Q Uh-huh.

A No, sir.

Q It came right out of the house?

A She came straight out of the house with it.

Q And she did obtain that after prior meetings with Ms. Potts?

A I don't know about any prior meetings with Ms. Potts or anything like that. The only thing I know, I

was contacted and she was going to buy a gram and I wired her, gave the money to her, observed her go into the house and she came out with four triangle squares.

MR. HARMON: Your Honor, I don't see what this has to do with the search warrant. We're pre-trying the case.

THE COURT: Proceed, the objection is overruled.

Q Did you have her house under surveillance in the days immediately prior to when the buys occurred?

A No, sir. I might drive by there occasionally or drive by on the block down to where I could see the residence.

Q Did you inquire or investigate at all to determine where Sharlene Wilson had to go to get the methamphetamine?

A No, sir.

Q There was no evidence that she made it herself in the house when you got there?

A No.

Q There was no drug lab there?

A No, sir.

Q When you went on the raid, who was with you?

A Roger Walls, John Garner, two officers from the Hot Spring County Sheriff's Department—

Q Were they in uniform?

A Yes, sir. Steve Gullick.

Q He's a DTF officer?

A He was a DTF officer at that time.

Q Steve Gullick, Efird. Uniformed officers, Gullick, anyone else?

A Mr. Harmon was in a vehicle.

Q Separate vehicle?

A Yes.

Q When did he go in or did he?

A I could not tell you.

Q Who was the first person in?

A I want to say it was Mr. Walls, well, I'm assuming, Mr. Walls and the two uniform officers and Mr. Gullick. I was about the fourth person in the residence.

Q Did Mr. Walls have the warrant in hand? Who had the warrant in hand, let's put it that way?

A I assume Mr. Walls had the warrant in hand.

Q You had handed it to him prior to that?

A Yes, sir.

Q And they went in with weapons drawn?

A I didn't see no weapons drawn. I didn't have my weapon drawn.

Q The people in front of you, that you could see, have their weapons drawn?

A No.

Q Inside, did you see anybody holster a weapon?

A No, sir, because whenever I went inside, I went straight to the bathroom where Ms. Wilson was.

Q When you got in, did she, was she where she could hear what was going on?

A Apparently because she had run.

Q She was in the bathroom?

A Uh-huh.

Q Did you see her run into the bathroom?

A They advised me to get to the bathroom.

Q The other two, they saw her, not you?

A Apparently they seen her, I did not see her.

Q So, you in your own mind don't know whether she ran to the bathroom, she was in the bathroom?

A She was in the bathroom.

Q Anybody say who they were and what they were doing there prior to the door, coming to the door?

A At that time I got Ms. Wilson and brought her into the kitchen and what was going on in any other part of the house, I couldn't tell you.

Q Prior to the door opening, you saw the door open?

A Going into the house?

Q Yeah.

A I was getting out of the vehicle.

Q You were at the front?

A Uh-huh.

Q Was there anybody at the back?
A I assume there was officers at the back. I was not back there.
Q Did they come in the back door, too?
A I don't know. I stated I got Ms. Wilson and brought her into the kitchen.
Q If you know, I mean. If you don't know—
A I don't know.
Q When they went in, the house wasn't locked?
A I don't know. I was not the first one in.
Q Well, you didn't see anybody kick the door down?
A No, sir. The door was shut whenever we left. So it was not kicked down.
Q Did you hear anybody say, "Police, we've got a search warrant. Open up", pounding on the door, knocking?
A No, sir.
MR. HALL: That's all I have.
THE COURT: Anything, Mr. Harmon?
MR. HARMON: No.

(Witness excused.)

OFFICER ROGER WALLS
(R. 182-87)

called as a witness on behalf of the Defense, after having previously been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HALL:

Q You were the first person in the house on the execution of the warrant?
A Of the search warrant?
Q Yes.
A I was either first or second. There was two of us that kind of went through the door at the same time, myself and, at that time, a Hot Spring County Deputy, Steve Smith, who now works for—

Q A uniformed officer?
A Yes, sir, he was a uniformed officer.
Q Exactly what time did you arrive at the residence?
A It was late evening. I couldn't tell you exactly what time it was.
Q It was during the day time hours of the search warrant? It wasn't a night time search, correct? Was it about five p.m.
A Sounds about right. It was winter time, it was getting, yeah, about that time.
Q Was it already dark, do you recall?
A I don't recall.
Q Who had the warrant in hand?
A I did.
Q It was given to you by Mr. Efird?
A That's correct.
Q Do you know if the door was locked?
A No.
Q Did you open it and walk in?
A Myself and Deputy Smith went up on the porch. I had the warrant. He was the uniformed officer. The prime door was open, the screen door was shut. We could see people in the living room. We identified ourselves as police officers and told them we had a search warrant and entered while we were doing that.
Q People just sitting around on the couch?
A There was, as we come upon the porch, Mr. Jacobs was standing in the middle of the living room floor facing away from us and he's the person that—
Q Standing?
A Standing, yes.
Q And there was another couple there—
A Right.
Q —were they sitting?
A I don't recall.
Q Did you know what Mr. Jacobs looked like before you went in?
A Yes, I did.

Q Go ahead.
A And we entered the house upon announcement.
Q Nobody tried to resist you?
A No.
Q And you said that it was a screen door was the only thing that was shut?
A Yes, sir.
Q The inside door was not?
A Was not.
Q When you pulled up, did you have any lights on or anything like that?
A Blue lights?
Q Yeah.
A No, sir.
Q It was a silent approach?
A Yes, sir.
Q Do you know how Joann Potts came to become an informant?
A Yes, sir.
Q Would you explain it for us, please?
A She had acquired home problems of her own and agreed to work with the State.
Q Was her problem a delivery or a possession?
A Her main problem was her husband.
Q Was his problem a delivery or a possession?
A I don't recall the exact charge, I don't recall exactly what it was. My contact began there.
Q His vehicle was seized for at least a while?
A I don't recall, could have been.
Q Do you recall who made the case against him?
A I don't.
Q It wasn't you, though?
A No, sir, one of my officers.
Q And, at what point did she agree to cooperate, the same day she was arrested or subsequently thereafter?
A I can't tell youn for sure.
Q You ever talk to her about it?
A I did.

Q How many separate cases did she make, do you know?
A I couldn't tell you exactly. I could guess that there was around a dozen, twelve, fifteen.
Q Do you recall how many different people? I don't need to know their names, just the number of people.
A I couldn't tell you, but that was probably about that many people.
Q Approximately a dozen people?
A Yes, sir, or fifteen.
Q Was she paid for each one of her buys?
A She was paid for some, I don't know whether she was paid for all of them.
Q How much was she paid for each?
A I want to say it was like $40.00. I'm not sure on the exact amount. We have records and statements.
Q Did you give them a 1099 at the end of the year?
A No.
Q Are you exempt from the—
A We're exempt from that.
MR. HALL: That's all I have of Mr. Walls.
MR. HARMON: No questions.
THE COURT: Thank you officer.

(Witness excused.)

* * * *

(R. 188-90)

MR. HALL: On the second point of the motion, that Efird swore to the affidavit, but not before the Judge, I'll withdraw that based on his testimony and also the first argument that it was signed prior to the search. But, I still rely on points three and four, omitting exculpatory evidence. They admitted she had been arrested and was cooperating, was in fact paid, up to forty dollars a case. That was from both Efird and Walls. Efird testified that she had been to the defendant's several times trying to get her to make a sale, but didn't make reports of those because they didn't go down. I'm going to need to add one more witness. I can call Sharlene on the third point.

This is the fourth point but not the fourth issue, knock and announce. He admitted they didn't announce until after they were already coming through the door, he didn't announce outside. I'm going to call Sharlene Wilson. You're still under oath.

SHARLENE WILSON
(R. 190-99)

called as a witness on behalf of the Defense, after having previously been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HALL:

* * * *

MR. HALL: That's all I have. Pass the witness.

MR. HARMON: No questions.

MR. HALL: That testimony goes to the second and third points, that she had been to Ms. Wilson several times and that the third point, and third issue, she had to get the drugs from somebody else. She had to leave to get them and none of that shows in the affidavit and since the informant was paid, she is an agent, not just a citizen informant and not even just a CI, confidential informant. She was paid.

Q Oh, I didn't ask you about the entry. Did you hear anybody say, "Police, I have a search warrant?"

A As I said that day, I had been to the doctor. I had been in Dr. Breashear's office most of the morning.

Q Why?

A I had, I've got stomach problems really bad and it has resulted into to finding out that I've got colon problems. I had, I was throwing up, I had diarrhea and running a fever. I had just came from the doctor. I was in the bathroom throwing my guts up when the police came in. All I heard was a bunch of people screaming and hollering. My son was terrified, absolutely too death and Mr. Hall, there was guns drawn at my son and at me.

Q Who came out of the bathroom—

A Henry Efird pulled his gun on me and it was not John Garner, it was Roger Walls and they grabbed me and they threw me down on the floor of the kitchen.

Q I'm just asking about who entered the house and did you hear them say they were the police and they had a search warrant?

A No. I didn't hear nothing except my little boy screaming, that's when I came out of the bathroom, half dressed. I was pulling by jeans up at the time, when I opened the bathroom door, and came around the corner, and saw the terror in my son's face, then the next face I see is Henry's, then the next one, and then Mr. Harmon's. And the search warrant was handed to me or what was supposed to be a search warrant was handed to me by Mr. Harmon, not Mr. Walls and no one else.

MR. HALL: That's all I have on the knock and announce issue.

MR. HARMON: I have no questions.

(Witness excused.)

(R. 199)

MR. HALL: * * * And, on the exculpatory evidence issue, he omitted evidence is enough to undermine the credibility of the informant and that the Court would require more information. If everything was put before the Court, the Court would have required more information to make that decision to issue the search warrant, so the evidence in 93-63 should be suppressed for that reason and failure to knock and announce.

THE COURT: Is there anything else regarding the motion to suppress?

MR. HALL: No.

THE COURT: Motion to suppress is denied. Do you have any other pre-trial matters?

MR. HALL: No.

* * * *

DEFENDANT'S EXHIBIT 2

SEARCH WARRANT

STATE OF ARKANSAS
COUNTY OF HOT SPRING

TO: ANY LAW ENFORCEMENT OFFICER OF THE STATE

Issuing Judicial Officer: Judge John C. Cole

Place of Application for Warrant: Sheridan, Arkansas

Date of Application for Warrant: December 31, 1992

Affidavit having been made before me by Henery Effird, Agent for the Seventh Judicial District Drug Task Force, has reason to believe that on the premises located at 534 Oaklawn Street, Malvern, Arkansas in Hot Spring County, AR, there is now illegal narcotics in violation of Arkansas Code Annotated 5-64-401 et. seq. and a small caliber pearl handled weapon used in the commission of the sale of a controlled substance.

Description of person, place or thing to be searched: A white framed house located at 534 Oaklawn Street in Malvern, Hot Spring County, Arkansas.

Scope of the search granted: Includes the premises, curtilage and vehicles of 534 Oaklawn Street in Malvern, AR.

Directions to the place to be searched:

From the Hot Spring County Courthouse, go south on Locust Street to West Page Street (Highway 67). Turn right (south) onto Highway 67 and proceed to Oaklawn Street. Turn left onto Oaklawn Street and proceed approximately 1 and ½ blocks to 534 Oaklawn Street located on the left side of the street. It is a large white wood framed house with a porch on the front of the house.

The number of the address, 534, appears on the front of the house.

Grounds for search: presence of illegal narcotics in violation of Arkansas Code Annotated 5-64-401 et. seq. and presence of a weapon used in the commission of the sale of a controlled substance.

and I find there is reasonable cause for the issuance of this search warrant based upon:

(✓) one or more sworn affidavits

( ) sworn recorded testimony

and that the above described property is being concealed on the premises above described and that the foregoing grounds for the application for issuance exist.

This Warrant shall be executed within 60 days of the date issued and returned to the issuing Judicial Officer within 5 days of its execution unless shorter period(s) of time indicated.

(✓) Executed within 3 days of date issued (not more than 60)

(✓) Return within 5 days of date executed (not more than 5)

(Choose One)

(✓) This warrant shall be executed between the hours of 6:00 a.m. and 8:00 p.m.

or

( ) I find reasonable cause to believe that:

( ) the place to be searched is difficult of speedy access.

( ) the objects to be seized are in danger of imminent removal.

( ) the warrant can only be safely or successfully executed at nighttime or under circumstances the occurrence of which is difficult to predict with accuracy and authorized the execution of this warrant at any time, day or night, within 60 days from the date of issuance, or less if indicated above.

If documents other than lottery tickets, policy slips, and other nontestimonial documents used as instrumentalities of crime are authorized to be seized, this warrant shall be executed in accordance with provisions of Rule 13.5 of the Arkansas Rule of Criminal Procedure. Such files or ther collections of documents, among which the documents to be seized are reasonably believed to be located, shall be impounded under appropriate protection where found, unless otherwise indicated.

YOU ARE HEREBY COMMANDED to search forthwith the person or place named for the property specified, serving this warrant and making the search (in the daytime) (at any time in the day or night) and if the property be there found to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and bring the property as required by law.

Date issued:

/s/ John Cole
Signature of Judicial Officer

RETURN

I received the attached Search Warrant on the 31st day of December, and have executed it as follows: on 12-31-92, at 5:00 p.m. o'clock. I searched the person or premises described in the Warrant and left a copy of said Warrant with Sherlene Wilson together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the Warrant: See attached

The inventory was made in the presence of Henry Efird, Roger Walls—DTF.

I swear that this testimony is true and this is a detailed account of all property taken by me pursuant to the Warrant.

/s/ John Garner
Title: Supervisor

SUBSCRIBED AND SWORN TO AND RETURNED BEFORE me on this 5th day of January, 1993.

/s/ John Cole
Judicial Officer

AFFIDAVIT IN SUPPORT OF APPLICATION FOR SEARCH WARRANT

The undersigned affiant, being duly sworn and under oath before a judicial officer, states that the facts and circumstances tending to show that such persons or things are in the places or things are in the possession of the persons or places to be searched as requested on the attached application for a search warrant, are as follows:

My name is Henry Effird and I am an Agent with the Seventh Judicial District Drug Task Force. On December 30, 1992, at approximately 19:45, I met with a confidential informant in Malvern, AR. The informant called the residence of Sharlene Wilson at 332-8733 and spoke with Bryson Jacobs about the purchase of marijuana. The informant spoke with Sharlene Wilson about ten minutes later and arranged to purchase marijuana at the Country Mark Grocery Store. I briefed and searched the person and vehicle of the informant and provided him/her with $40.00. Myself and another agent of the Seventh Judicial District Drug Task Force went to 534 Oaklawn Street in Malvern, AR, and observed Sharlene Wilson leave the residence. We followed her to the Country Mark Grocery Store where we observed the transaction occur between the informant and Sharlene Wilson at approximately 20:05. Myself and the Agent then followed Ms Wilson to her home at 534 Oaklawn Street in Malvern, AR. The confidential informant met me at the Hot Spring County Courthouse and gave me one bag of green vegetable matter and $5.00. The informant stated that during the transaction Sharlene Wilson pulled a chrome plated, pearl handled, small caliber pistol and waived it in her face several times. The informant was searched and no other money or contraband was found. The evidence was turned over to John Garner of the Seventh Judicial District Drug Task Force for submission to the Crime Lab.

Directions to 534 Oaklawn Street, in Malvern, AR are as follows: From the Hot Spring County Courthouse, go

south on Locust Street to West Page Street (Highway 67). Turn right (south) onto Highway 67 and proceed to Oaklawn Street. Turn left onto Oaklawn Street and proceed approximately 1 and ½ blocks to 534 Oaklawn Street located on the left side of the street. It is a large white wood framed house with a porch on the front of the house. The number of the address, 534, appears on the front of the house.

The particular facts bearing on the reliability of the confidential informant and the means by which the information was obtained were:

The informant has made three purchases of controlled substances for the Seventh Judicial District Drug Task Force. The informant has no prior felony convictions.

Date of Affidavit: 12/31/92

The confidential informant had made a purchase of marijuana on 11-21-92 from Sharlene Wilson at the residence described and Bryson Jacobs was present; a purchase of methamphetamine was made at the residence by the C.I. on 11-13-92 and Bryson Jacogs was present.

* * * *

[Jurat and oath omitted]

APPLICATION FOR SEARCH WARRANT

Comes now the prosecuting Attorney for the Seventh Judicial District and hereby files formal application before this Magistrate for the issuance of a Search Warrant. This application is based on the sworn testimony of the affiant who completed the affidavit in support of this application which is attached hereto.

The person or place to be searched is 534 Oaklawn Street, Malvern, Hot Spring County, AR.

The directions to the place to be searched are:

From the Hot Spring County Courthouse, go south on Locus Street to West Page Street (Hikhway 67). Turn right (south) onto Highway 67 and proceed to Oaklawn Street. Turn left onto Oaklawn Street and proceed approximately 1 and ½ blocks to 534 Oaklawn Street located on the left side of the street. It is a large white wood framed house with a porch on the front of the house. The number of the address, 534, appears on the front of the house.

and the contraband expected to be found or evidence of a crime expected to be found are illegal narcotics in violation of Arkansas Code Annotated 5-64-401 et seq. and a weapon used in the sale of a controlled substance.

Wherefore, based on the accompanying affidavit in support, the Office of the Prosecuting Attorney for the Seventh Judicial District respectfully requests that the Search Warrant be issued.

[Jurat omitted]

12/31/92

SEARCH WARRANT [Inventory]

(1) Raven 25 cal semi auto pistol ser #1758414
(2) sample of suspected methamphetamine from toilet
(3) tupperware container w/meth
(4) four yellow tablets. (Valium)
(5) $355.00 cash
(6) ziplock w/meth
(7) pieces of paper w/drug records (suspected)
(8) pack of desposable syringes
(9) 25 cal ammo
(10) 270 cal ammo
(11) 243 cal ammo
(12) Browning 16 ga shotgun ser #60521
(13) two boxes shotgun shells
(14) Red gym bag w/drug evidence
(15) metal box w/drug evidence
(16) Jason binoculars in case w/drug records
(17) metal tray w/drug evidence
(18) used syringe

/s/ John Garner
DTF

DETECTIVE GARY MARTIN
(R. 409-11)

called as a witness on behalf of the Defense, after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HALL:

Q State your name and occupation, please.
A I'm Detective Gary Martin. I work for the Little Rock Police Department Narcotics Division.
Q Are you presently assigned to the Federal Drug Task Force?
A Yes, I've been with the DEA for fifteen years.
Q Little Rock Police Department pays your salary and assigns you to them?
A Yes, I've been with Little Rock twenty years.
Q And since you're with the DEA, you're governed by Federal regulations?
A Yes, I am.
Q Since Federal regulations prohibit you from talking about subject matter, I'm going to ask you some very limited questions. Do you know Sharlene Wilson?
A Yes, I do.
Q She ever work as an informant for you?
A Yes.
Q She every testify before a Grand Jury?
A Not for me, no.
Q For the DEA at all?
A Not that I know of, no.
Q She provided information to the U.S. Attorney's Office?
A I don't know.
Q Not in your presence?
A No.

Q How many times did she work for you as an informant?
A She made two drug purchases for me.
Q Were they not in Hot Spring County?
A No, they were in Little Rock.
Q Could you tell me approximately when, the year?
A Right before she was incarcerated. So, I don't know how long she's been incarcerated.
Q '92 or '93?
A May have been the first of '93. I don't how long she's been incarcerated.
MR. HALL: Thank you. That's all I have.

CROSS EXAMINATION

BY MR. HARMON:

Q Mr. Martin, did you know she was selling drugs here in Hot Spring County?
A No, I did not.
Q Is it unusual for someone to be an informant and also be selling drugs, too?
A No.
Q In fact, that's what some om them do, walk both sdies of the street, isn't it?
A Yes.

* * * *

SHARLENE WILSON
(R. 428-29)

called as a witness on behalf of the Defense, after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HALL:

Q State your name, please.
A Sharlene Marie Wilson Jacobs.

Q And, you're the defendant in this case?
A Yes, sir, I am.
Q How old are you?
A I'm thirty-seven years old.
Q Is Bryson Jacobs your co-defendant?
A Yes, sir, he is.
Q And you were married while the case was pending?
A I married him the day before he was convicted, July 13, 1993.
Q He was convicted in this case, too?
A Yes, sir, he was.
Q You been married before?
A Six times.
Q So, you've got multiple last names?
A Yes, sir, I don't have very good luck with marriages.
Q And, you have a prior conviction for hot checks?
A Yes, sir, for forgery hot checks, yes, sir.
Q What County were they from?
A In this County here.
Q How long ago?
A I think back in around '87 or something like that. I can't be sure, somewhere along in there.
Q You discharged on probation?
A Yes, sir, I was.

* * * *

Q Prior to the day, November 22nd. In fact, I'll give you some specifics on this. This is 93-1, Count I, said you delivered seventy dollars worth of marijuana to her?
A Uh-huh.
Q Do you recall the events prior to that occurrence?
A I don't understand what you're saying, Mr. Hall. Would you re-word it for me?
Q On the charge that's Count I in 93-1, it says that on November 22, 1992, that you delivered seventy dollars worth of marijuana to her, to Joann Potts?
A Uh-huh.

Q Do you recall the events, ten days or so immediately preceding that?
A Preceding, as in before?
Q Right.
A Just that Joann had been coming over helping me with my yard sales. She come over one night very, very upset wanting to get high. Asked me did I know where I could go get anything.
Q This is what you testified to before?
A Yes.
Q Immediately prior to the 22nd?
A Yes.
Q And, did you help her get any?
A Yes, I did.
Q And how did it happen?
A She said that she was fixing to leave Richard and that she was fixing to go out of town and that she wanted some for the road and would I please get her some. I hesitated first and I knew in my heart that she didn't have the money. She had to go get the money. I knew in my heart I shouldn't have done it, but I left and I went out and got the stuff and I brought it back to her. She had to leave. I had to leave and then when she got back I was already back and there I exchanged the stuff, the pot.
Q How much did you pay for it?
A I think thirty-five dollars. Thirty-five dollars.
Q How much was it, a quarter ounce?
A That's thirty-five dollars a quarter of an ounce, yes. So, two quarters yould have been seventy dollars.
Q Did you make any profit off that transaction?
A No, sir, I just did it for her.
Q It says on the 23rd, Count II, that you delivered methamphetamine to her. Did you do that?
A I delivered methamphetamine, I don't think it happend on that date. I'm not for sure, but it seemed like it happened all kind of together.

Q Why did she want methamphetamine? Did she say?
A Because she was leaving town.
Q Leaving Richard?
A Uh-huh, going out of town.
Q Why did you help her get it?
A Because I wanted her to leave me alone. She was at my house everyday. Just all of a sudden she made statements that she wanted to get high. She asked me on several occasions where I got it from, you know. And, I didn't ever tell her. There was a few weeks period in there that I couldn't go get her anything because there wasn't nobody around to get anything to for anybody.
Q Did she specfically ask for methamphetamine?
A Yes, she did.
Q Speed?
A No, sir, she asked did I know where she could get any crystal, period, not crank, crystal.
Q Where did you have to go to get that for her?
A Where did I have to go?
Q Yeah.
A I went to Glen Rose.
Q Did you make any profit on that?
A No, sir.
Q Between the occurrence on the 22nd, of the marijuana and when she asked for the crystal, how long did that take?
A That's what I'm saying. There was just, it was right there together, okay. The best I can remember, both things were purchased at almost the same time.
Q How many times prior to you helping her get it, did she actually say that she wanted to get it?
A I couldn't put a number on how many times she's asked.
Q Once a day for two weeks, twice a day?
A At least once every other day. She made a conscious effort and she, every day she knew she could come over and smoke a joint, everyday.

Q Did she?
A Sure. I'm not going to say every, every day, but most every other day or of a evening, twenty minutes here, twenty minutes there.
Q Be more specific. Whenever she came over to your house, did she smoke marijuana with you?
A Sure.
Q What happened between November 22nd and 23rd and December 30th?
A What happened?
Q On the 30th. She testified that you delivered a quarter ounce of marijuana for thirty-five dollars to her.
A On what day?
Q December 30th, the day before the raid.
A That transaction never took place.
Q Did you see her between the—
A I did see her that day.
Q —22nd, November 22nd and the end of the year?
A Yeah, I saw her a couple of times.
Q Did she come over to your house?
A Sure did. I gave her seventy-five dollars and took her to Fred's.
Q To do what?
A To Christmas shop for her baby and to buy her some food and make a conscious effort to help the child.
Q Was Richard working then?
A From what I understood at that lumber mill. Every time I ever went to their house out at Harp, he was always there piled up on the couch or he was out doing whatever. I don't really know. But most of the time when I went out there he was there.
Q Was he working then?
A Pardon me?
Q Was he working then?
A I don't really know. Most every time I went out there he was there, which was of an evening.
Q In the approximately six weeks, five and a half to six weeks between November 22nd and 23rd and Decem-

ber 30th, how many times did you see her if you can recall?

A From the time that I took care of that and December 30th, is that what you're asking me?

Q Yeah.

A How many times? Maybe three at the most, three times because that was the Christmas holidays and it's Christmas tradition, I always went home. I helped take care of my Mom. My Mom has—

Q Where is home?

A Prattsville and that's my homeplace. That's where I was raised at and I would go home and visit Mom and Dad and see how they were doing and help cook and get ready for the Christmas holidays and I was doing the same thing by going out to Mr. and Mrs. Jacobs and helping her as well because she just had a massive heart attack.

Q Did you meet her at all on that day. She said the two of you got together that day?

A What day?

Q December 30th, I'm sorry.

A Yeah, I'm trying to think. It was of the afternoon. I seen her at the Fuddy's, Milk and More or something like that, down here on Page, it's a convenient store. I seen her down there. We passed. I pulled in the Milk and More to get out to get gas, she got out, turned around and came back and met me. I was getting the gas and she walked up to me and at that point, we just was having general small talk. We wasn't really talking about anything in particular, I mean, "Well, what did you get for Christmas? I got this, I got that. How's the baby?" Because the baby wasn't with her. Her brother Jackie was with her. I talked to him for a few minutes and at that point, she asked me did I have any weed and I told her, "No, I did not." And she asked me could I get her any and I told her, "No, I could not." And, that was it, period, end of sentence. Later on that evening she come by the house again, which I was at home on Oak-

lawn Street and she come by the house again and I was not there. I was gone. Bryson had told her to, that I was not here, I'd be gone for about ten or fifteen minutes. She could come back if she wanted to. In about ten or fifteen minutes later I guess after I got in, because when I got back Bryson told me she had came by.

Q Did she come back?

A Yeah, sure did. Welcomed her in my house.

Q You saw her that day at your house?

A Uh-huh.

Q Smoke marijuana with her that day?

A No, I didn't have any pot that day, none whatsoever.

Q This is the day before the raid?

A Yes, sir.

* * * *

Q Did you know that marijuana seeds were found in the house?

A Yes, sir, I do.

Q Did you know that they were there prior to the police finding them?

A No, I did not.

Q Do you know where they were found?

A I was told in the top of a, the house had a real high ceiling and there was a pantry built in the corner of the kitchen where they blocked out a door and it had like ten shelves in there. It was so high you didn't even have to go all the way up and it was like from the ground up, from the floor up and as to my understanding where the seeds were found.

Q Did you put them there?

A No, sir, I did not.

Q How long have you been in the house prior to the raid occurring?

A I moved into the house on Oaklawn Street in May.

Q You ever been inside the top shelves of the cabinets?

A Only far enough to reach up there and wipe the dust and the bugs and general cleaning. But as far as

having to drag a chair over there each and every time to get, well, I didn't have that kind of canned food to put in there no way. That's what it was to store perishable foods, non-perishable foods.

Q What purpose do marijuana seeds serve?

A What purpose do marijuana seeds serve?

Q Yes. You can't smoke them, can you?

A. Sure can't.

Q Did you have any marijuana seeds that you knew of?

A Probably on my tray. Whenever I get through with what I just smoked, I would roll it up, I would discard the waste and throw it in the trash, flush it down the toilet, whatever. There was no purpose for me to keep it around.

Q Is that for the purpose of growing marijuana?

A Sure, I guess. I can't make plants grow, much less marijuana.

Q Do you have any idea where the marijuana seeds came from?

A No, sir, I do not.

Q To your knowledge, did you have any meth-amphetamine in the house—

A No, sir, I did not.

Q —the day of the raid?

A No, sir, I did not.

Q Know where it came from?

A No, sir, I do not.

Q The day of the raid, would you describe what happened?

A The entire day from when I got up that morning?

Q No, just around the time of the raid.

A Oh, around the time of the raid. Let's see. I went to the doctor. I went by the bank and I cashed a check for some ties that we had sold at Casa Gertes in Hot Springs Village, went to the house, I laid down.

Q Who else was there?

A At the time, just me and my son, earlier that after-noon.

Q When did Bryson come?

A About ten minutes before the police tore in the house.

Q Who was with him?

A Who was with Bryson?

Q Yes.

A Bryson was by himself. He has just pulled up into the driveway.

Q Did the Cothern's get there before he did?

A Yeah, right before he did. I had been sick all afternoon, let's see, I'm trying to remember. Linda and Terry got there and we were sitting there watching TV and we were supposed to go over to their house that night and play cards, but we never made it because I didn't feel good. Plus I ended up going to jail. But, that was their purpose for coming by to see if we was still going to come over and play cards that night. And my son was there with me and then Linda and Terry had gotten there maybe five or ten minutes before Bryson got there and at that, as a matter of fact, I was just come back out of the bathroom when Bryson had got there and was enroute back whenever the police were coming in. As a matter of fact, the police, I didn't even have my jeans up when the police come in the door. I was, like I said, I was ill.

Q What caused you to come out of the bathroom?

A I was through. No, I heard a noise. My son run back through the house and was hollering and it's a mother's instinct to react to her son or to a child and I reacted. I come out of the bathroom as fast as I could. In the process of putting up, snapping up my jeans and the bathroom sits off to the side of the house and there was a wash room, then the door into the kitchen, which was a very large kitchen and just as soon as I exited out of the bathroom into the kitchen, I met Mr. Henry Efird and Steve Gullick with Mr. Harmon presiding with guns drawn in my kitchen and took me down to the floor at that time, searched my person. At that time, handcuffed me and moved me into the living room area of my house.

having to drag a chair over there each and every time to get, well, I didn't have that kind of canned food to put in there no way. That's what it was to store perishable foods, non-perishable foods.

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Q Where was your purse at that time?

A My purse was in the kitchen. My purse always sat in the kitchen beside my comupter.

Q Did Henry Efird search your purse?

A I guess he did. I did not see Henry Efird search my purse. I was in the other room. Roger Walls was in my back bedroom and I say that's the back bedroom, that's my bedroom and had Linda face down on my bed with her hands handcuffed behind her. When they brought me through the living room by that time, the DTF already had Bryson up and out of the house. I do not remember seeing Bryson from the time, he wasn't there. They took him out of the house immediately. Terry, Linda's boyfriend was face down between my coffee table and my couch, handcuffed behind his back also. At that point, I sat there, Mr. Harmon came over to me and handed me what was supposed to have been a search warrant and began to make remarks, statements to me. They went to going through everything humanly possible. He got my address book. Bryson's, they had papers strewn from one end of my house in the living room and it was a mess.

Q Where were the syringes in the house?

A The syringes?

Q Yes.

A The syringes were in a first aid kit in the top chest-of-drawers of my bedroom.

Q What purposes did they serve?

A The syringes?

Q Yes.

A I used syringes to use on two elderly patients that I care for part time with the Arkansas Health Care, the Hopeless Program out of Hot Springs. Do you want the two ladies' names? One of them is now since passed.

* * * *

Q The police found six or eight them, syringes that were still packaged.

A Uh-huh.

Q The one that was unpackaged, do you recall if the one was unpackaged?

A I don't recall one being unpackaged. The bag in my first aid kit was tore open. I mean, sir, the, my blood pressure kit was in there along with everything else that you use right down to, you know, how to administer CPR in the first aid kit.

Q Wheer did you get your nursing training?

A In Barstow, California.

Q What school?

A At Barstow Community College.

Q Two year program?

A Yes, sir.

Q Were you an LPN in California?

A No, sir, I'm a licensed vocational nurse in California.

Q Are you licensed in Arkansas?

A Yes, sir, I am.

Q As what?

A As an LVN and I've worked as a certified aide.

Q Did you know Henry Efird prior to December 31st?

A Yes, sir, I do.

Q How far back you two go?

A He's related to my father.

Q And, have you worked for Hot Spring County Sheriff's Office?

A Many years ago, yes, sir.

Q Long time ago when he was CID there?

A Yes, sir, I have.

Q How long ago?

A I had up until I guess about 1986, which was the year that I was raped.

Q And when you got raped, what happened to you?

A What happened to me?

Q Psychologically?

MR. HARMON: Objection, Your Honor.

THE COURT: The objection's overruled.

Q And you went to the Dorcus House among other things?

A I withdrew.

Q Get involved with drugs?

A Yes, sir, I did, very badly.

Q How long did that last?

A Until I went to the Arkansas Rehabilitation Institute at the Baptist Medical Center in July of that year. I would say around seven months.

Q How long did you stay in the rehab, do you know?

A I would say around forty-five days, maybe a little longer, maybe be a little less. It was either from a thirty to forty-five day program and I did coin out.

Q What kind of drugs were you involved with back then?

A Cocaine and pot. I had never used it intravenously until that point, but I didn't want to live no more at that point either.

Q Did you talk to your son about drugs?

A Yes, sir, I sure did.

Q Did you explain to him how you can get addicted, what they do to you?

A Yes, sir, I sure did.

Q Do you smoke marijuana in front of your son?

A Yes, sir, I have.

Q Why is that?

A Why is that?

Q Yeah.

A Stupidity on my part. I never deny to my son, I've never told my son that it was right. He knows that it's wrong. Both of my kids know that what it's done to me and mine and their lives. So, I know good and well I don't think I have to worry about my children abusing.

Q I noted that Ricky in his statement referred to knowing you were at rehab. Did you explain rehab to Ricky?

A Yes, sir, he came and visited me there quite often with his stepfather.

Q Where did the hemostats come from, Exhibit No. 17, the State says it's yours?

A Well, quite truthfully both hemostats don't belong to me. I did possess what you call suture stats, which are smaller. They're more pointed and they kind of got a little curve on them to where you can snip sutures if you had to be stitched or something. That's what I had. I'm not, those there are not in my, were not mine. They do not belong to me. Now, where them ones are that were in that first aid kit that night along with my first aid kit, I do not know.

Q Were those hemostats Penny's?

A Well, they could have been. She's kind of, they may have been hers. Penny's quite open. She told you how she acquired them.

MR. HALL: Pass the witness.

CROSS EXAMINATION

BY MR. HARMON:

Q Sharlene, are you telling this jury you never used any drugs until after 1986?

A No, sir, I'm not telling this jury that.

Q Were you convicted in Garland County for possession of drugs in 1980?

A Not that I know of.

Q How many convictions do you have?

A The only conviction I know of is the forgery and the hot checks. That's the only conviction that I'm aware of.

Q That would be two in Hot Spring County and one in Grant County?

A It could be. I'm not really sure, sir. There was a series of—

Q One in 1987 and two in 1988?

A Yes, sir.

Q Didn't you testify on direct examination you only had one prior conviction?

A It's to my understanding that the convictions ran concurrent.

Q You have three prior convictions, Sharlene.

MR. HALL: Your Honor, she did not testify of one prior conviction. She said hot checks and forgery.

THE COURT: I'm sure the jury is aware of what she testified to and keep that in mind, ladies and gentlemen.

Q You stated that you were a rape victim?

A Yes, sir, I am.

* * * *

Q Okay. What did you do on the 31st of December of '92 while you were in the bathroom?

A Pardon me?

Q What did you do in the bathroom?

A Well, what do you usualy do when you go to the bathroom?

Q Well, I don't usually flush an ounce of pot down the toilet.

A Did I flush an ounce of pot down the toilet?

Q Well, let's read your deposition here, page 30, lines six through fourteen. What did you tell Mr. Horton you did in the bathroom?

A "Yes, I had an ounce of weed." Do you want me to read this?

Q Yes, I want you to read that.

A Where it says, "Okay, I got up and went into my bathroom and I opened by bathroom pantry which I had a very large bathroom and underneath some quilts I had approximately an ounce of weed and I flushed it. I flushed it down the drain, I mean down the toilet. Now, when you're talking about weed, you're talking about marijuana? Yes, sir. Okay, I'm talking about weed? Yeah. Okay." Would you like for me to continue?

Q No, I just want to know what you did. Did you do that?

A Yes, sir, amongst using the bathroom.

Q Well, which way is it now. You lied until I showed you this.

A I did not lie.

Q You said you didn't do anything like this until I showed you the deposition.

A I did not say that. I told you I had come to the bathroom and I went back to the bathroom. That's what I said.

* * * *

Q Now, Sharlene, just so we all understand. You're not denying that you sold this bag of pot to Joann Potts, is that right?

A I'm not denying that.

Q That's the one November 22nd of '92?

A That's the date you said it was. I think there was a date difference in there, but yes, that—

Q You agree that you sold that?

A Yes, sir.

Q And you agree that you sold the methamphetamine on the 23rd of November?

A I believe they were both the same date, sir.

Q You sold it to her whether it was the 22nd or 23rd—

A Yes, sir.

Q —you sold it to her?

A I did.

Q And that's your voice on the tape?

A I'm not so sure that's my voice on the tape.

Q Well, let's get it straight. A while ago it was. Whichever way you want it.

A This is my voice right here, Mr. Harmon. I'm admitting that I did.

Q Was that you on the tape or wasn't it?

A I don't know—

Q (Interposing) A while ago you said it was.

A At the end of that tape it is me. I don't sound like a man.

Q No, that's Bryson. I want to show you State's Exhibit No. 4 and that's the pot that Joann got from you on the 30th of December?

A She never received no pot from me on that date.

Q This is all a lie?

A Yes, sir, it certainly is.

Q Her and Henry Efird made all this up?

A I'm not questioning that.

Q Did you see her on the 30th?

A Yes, I testified to that.

* * * *

Q All right. Did you know the marijuana was in your house on the 31st?

A Did I know that the marijuana was—

Q Yes.

A Yes, I did.

Q Because you flushed some of it down the toilet so you knew it was there, didn't you?

A Yes, I had pot.

Q And you knew the hemostats were there and the syringes were there. Did you know the methamphetamine was there?

A There was no methamphetamine in my home.

Q It was in your purse, wasn't it?

A No, sir, it was not in my purse.

Q How did it get in your purse?

A Y'all are supposed to be the experts here. Remember I'm the defendant. I'm admitting to my guilt.

Q But not all of it?

A I don't see where I've denied anything except for the fact that—

Q You're not denying you had the methamphetamine in your purse?

A Pardon me?

Q You're not denying you had the methamphetamine in your purse?

A I'm denying that it was in my purse, yes, sir I certainly am.

Q Where was it?

A Well, I do not know. You were there.

Q Was it in your home somewhere?

A I do not know.

SUPREME COURT OF ARKANSAS

No. CR94-160

SHARLENE WILSON,
Appellant,

v.

STATE OF ARKANSAS,
Appellee.

Appeal from the Hot Spring County Circuit Court,
No. CR93-1-1, CR93-63-1
HON. JOHN W. COLE, JUDGE

AFFIRMED.

OPINION DELIVERED JUL. 11, 1994

STEELE HAYS, Associate Justice

Appellant Sharlene Wilson was tried and convicted of possession of marijuana, delivery of marijuana, delivery of methamphetamine, and possession of drug paraphernalia. The jury sentenced her to a total of thirty-one years imprisonment in the Arkansas Department of Correction and one year imprisonment in the Hot Spring County Jail. She was fined a total of $11,000. On appeal Ms. Wilson charges the trial court with two errors: (1) denying her motion to dismiss based upon outrageous police conduct and (2) denying her motion to suppress the fruits of the search of her residence. Finding no error, we affirm the judgment of conviction.

Ms. Wilson was incarcerated in the Malvern City Jail awaiting trial. She was represented by counsel at the time. Officers with the Seventh Judicial District Drug

Task Force wired an informant and sent her into the appellant's cell. After a brief conversation with the informent, Ms. Wilson discovered the transmitter. At no time did Ms. Wilson incriminate herself or supply any information pertinent to her case.

Officer Roger Walls testified he had information that Bryson Jacobs, who had been living with Ms. Wilson, was planning an escape from the Hot Spring County Jail. According to Walls's testimony, the informant was sent into the cell to uncover the plans for escape. However, other officers testified to a dual purpose in the use of the informant: to obtain information which could be used against Ms. Wilson and to obtain information regarding the escape.

The appellant moved to dismiss the charges against her based upon a Sixth Amendment violation. Ms. Morrison contends the outrageous conduct of the officers warranted the extreme remedy of dismissal of the charges. Because we find that no prejudice occurred, we will assume, arguendo, that the Sixth Amendment was violated under the circumstances of this case.

In *United States v. Morrison*, 449 U.S. 361 (1981), the United States Supreme Court held that *"absent demonstrable prejudice, or substantial threat thereof, dismissal of the indictment is plainly inappropriate, even though the [Sixth Amendment] violation may have been deliberate."* (Emphasis supplied.) Factually, Ms. Morrison had retained counsel to represent her in the pending criminal proceedings. Thereafter, two agents of the Drug Enforcement Agency, aware that she had been indicted and had retained counsel, sought to obtain her cooperation in a related investigation. They met with her without the knowledge or permission of her counsel. The agents told her it would be to her advantage if she cooperated but she would face a stiff jail term if she did not. At no time did Ms. Morrison incriminate herself or supply any information pertinent to her case. Ms. Morrison moved to dismiss the indictment. In determining that

dismissal of the indictment was not appropriate, the Court noted:

> [W]hen before trial but after the institution of adversary proceedings, the prosecution has improperly obtained incriminating information from the defendant in the absence of his counsel, the remedy characteristically imposed is not to dismiss the indictment but to suppress the evidence or to order a new trial if the evidence has been wrongfully admitted and the defendant convicted. In addition, certain violations of the right to counsel may be disregarded as harmless error. [Citations omitted.]

Similarly, in *Massiah v. United States*, 377 U.S. 201 (1964), the Court held that where a Sixth Amendment violation has occurred the defendant's own incriminating statements could not constitutionally be used by the prosecution as evidence against him at his trial. Once again, Mr. Massiah had retained counsel. While he was free on bail a federal agent succeeded by surreptitious means in listening to incriminating statements made by him. At Mr. Massiah's trial these incriminating statements were brought before the jury. The Court held that Mr. Massiah was denied the basic protections guaranteed by the Sixth Amendment when such evidence was used against him at his trial.

Ms. Wilson acknowledges the holdings in *Morrison* and *Massiah*; however, she submits we should reverse and dismiss under Ark. Const. Art. 2, § 8 and § 10. We find the cited provisions of the Arkansas Constitution do not provide for such relief. Further, the appellant fails to allege she suffered any prejudice as a result of the surreptitious actions. We have repeatedly held that an appellant must show prejudice, because this Court will not reverse for harmless error. *Heinze v. State*, 309 Ark. 162, 827 S.W.2d 658 (1992).

It is troubling to find in this record a clear implication that public officials charged with enforcement of law

would, in concert, pursue a course calculated to circumvent fundamental provisions thereof. Not the least of our concerns is the fact that had the plan succeeded, the prosecution of these offenses would have been seriously jeopardized.

Turning to the second point, officers with the Saline County Sheriff's Office and the Seventh Judicial District Drug Task Force executed a search warrant at the home of the appellant. Officer Henry Efird's affidavit in support of the warrant recited that a confidential informant had made purchases of marijuana and methamphetamine from the appellant at the residence. Further, Officer Efird observed Ms. Wilson leave her residence and proceed to a meeting with the informant. At that time, the officer observed a transaction between Ms. Wilson and the informant.

During the search of Ms. Wilson's home, the officers discovered an amount of marijuana, an amount of methamphetamine, and drug paraphernalia. The appellant moved to suppress the evidence seized in the search on the ground that the affidavit contained omissions of fact which were material to the finding of probable cause and on the ground that the officers failed to "knock and announce."

At the suppression hearing, Ms. Wilson contended three exculpatory items were omitted from the affidavit. First, the affidavit failed to disclose that the informant and her husband had been arrested and that she had agreed to cooperate in order to help herself and her husband. Second, the affidavit failed to disclose that Ms. Wilson declined to sell drugs to the informant on prior occasions. Third, the affidavit failed to disclose that when a buy allegedly occurred, the drugs did not come directly from Ms. Wilson's home. Ms. Wilson contends that had these omissions been included in the affidavit it would have undermined the informant's credibility to the point that prob-

able cause would be lacking. The trial court denied Ms. Wilson's motion to suppress the evidence.

In reviewing a trial court's ruling on a motion to suppress, we consider the totality of the circumstances to determine if the trial court's decision was clearly against the preponderance of the evidence. *Pyle v. State*, 314 Ark. 165, 862 S.W.2d 823 (1993). We consider the facts in the light most favorable to the appellee. *Id.* Under *Franks v. Delaware*, 438 U.S. 154 (1978), a warrant should be invalidated if a defendant shows by a preponderance of the evidence that: (1) the affidavit contained a false statement which was made knowingly, intentionally, or recklessly by the affiant and (2) the false statement was necessary to a finding of probable cause.

In *Pyle*, supra, we concluded that even with omissions there must be a knowing intent to deceive, or a reckless disregard of truth. Further, we found the omissions must involve material circumstances which contradict or dispel the incriminating factors in the affidavit. As to the informant's motive for cooperation in the instant case, such an omission simply does not contradict or dispel the incriminating factors in the affidavit. Also, Officer Efird independently corroborated most of the information supplied by the informant which constitutes "particular facts bearing on the informant's reliability." *See* Ark. R. Crim. P. 13.1. Second, we have specifically recognized that the omission of refusals to sell drugs on other occasions does not amount to deception by negation. *Pyle*, supra. Finally, applying the *Pyle* standard, where Ms. Wilson obtained the drugs is immaterial to the incriminating factors in the affidavit.

Even if the omissions were material, probable cause is present in the warrant. Officer Efird stated that he followed Ms. Wilson from her house to a meeting with the informant. Officer Efird observed a drug transaction. Thus, the credibility of the informant is not an issue regarding probable cause Further, as there was probable

cause to believe Ms. Wilson possessed drugs at her residence, where she obtained or manufactured the drugs is irrelevant.

As an additional ground for suppression of the fruits of the search, Ms. Wilson submits the officers executing the search failed to knock and announce their identity before entering the residence. The testimony indicated that the officers entered the home while they were identifying themselves. Ms. Wilson relies upon *Miller v. United States*, 357 U.S. 301 (1958), as the sole authority for her argument. The appellant contends, based upon *Miller*, that the Fourth Amendment requires officers to knock and announce prior to entering the residence. However, *Miller* involved a statute, 18 U.S.C. § 3109, which specified that a law enforcement officer, executing a search warrant, may break open a door only if, "after notice of his authority and purpose," he is denied admittance. The Fourth Amendment was not mentioned.

There is no authority for Ms. Wilson's theory that the knock and announce principle is required by the Fourth Amendment. Furthermore, Ark. R. Crim. P. 13.3 outlines the procedure to be followed in the execution of a search warrant, and provides in part:

> (e) The executing officer, and other officers accompanying and assisting him, may use such degree of force, short of deadly force, against persons, or to effect entry or to open containers as is reasonably necessary for the successful execution of the search warrant with all practicable safety.

Rule 13.3 does not contain a "knock and announce" rule. *See also Dodson v. State*, 4 Ark. App. 1, 626 S.W.2d 624 (1982) (Glaze, J., concurring), *cert. denied*, 457 U.S. 1136 (1982).

In sum, we find no error and affirm the judgment of conviction.

SUPREME COURT OF THE UNITED STATES

No. 94-5707

SHARLENE WILSON,
Petitioner

v.

ARKANSAS

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

November 28, 1994